IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 11678 of 2004

Between:

M.V.R. Satyanarayana S/o. M.V.S.N. Murthy,
R/o. 7-3(B)-10/1, Saradhanagar, Ramanaiahpet, Kakinada E.G.District.

..... PETITIONER

AND

1 A.P. Public Service Commission, rep. by Secretary, Opp. Gandhi Bhavan, Hyd.
2 Chief Secretary to Government, Govt of A.P., Secretariat, Hyd.
3 The Secretary, Women Development, Child Welfare and Disabled Welfare Department, Secretariat, Hyd.
4 The Principal Secretary to Government, PR & RD Dept., Secretariat, Hyd.
5 The Engineer-in-Chief, Panchayat Raj, Erramanzil Colony, Hyd.
6 The Principal Secretary to Government, Irrigation and Projects, Secretariat, Hyd.
7 The Engineer-in-Chief, Irrigation Dept., Erramanzil, Hyd.
8 The Principal Secretary to Govt., Transport, R&B, Govt of A,P., Secretariat, Hyd.
9 Engiener-in-Chief, Roads and Buildings, Dept., Erramanzil, Hyd.
10 The Principal Secretary to Govt., UD & MA Dept., Secretariat, Hyd.
11 The Engineer-in-Chief, Public Health and Municipal Engineering, Masab Tank, Hyderabad-500 021.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more in the nature of Writ of Mandamus declaring the orders dt. 16.12.2003 passed in O.A.No. 7148/1997 with M.A.NOs. 1613/98, 3185/99, 691/2000 and 2241/98 on the file of A.P. Administrative Tribunal, Hyd, as illegal and arbitrary and consequentially direct the respondents to give effect three

percent reservation to PH category with retrospective effect by considering the case of the petitioner for the post of Assistant Engineer in the Engineering Subordinate Services, based on the severity of the disability which the petitioner is having as the post of Asst. Engineer is meant to be filed only with the Orthopaedically handicapped persons with all consequential benefits like payment of arrears of salary, seniority etc from the date n which the appointments were given to the post of Assistant Engineer Pursuant to the Notification No. 8/95.

Counsel for the Petitioner: MR.P.V.S.S.S.RAMA RAO

Counsel for the Respondent No.1: MR.M.VIJAY KUMAR

Counsel for Respondents 2 to 11: G.P. FOR SERVICES-II.

The Court made the following:

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ORAL ORDER: (per GB. J.)

The Writ Petition is filed challenging the order passed by the A.P. Administrative Tribunal (hereinafter referred to as the Tribunal) in OA.No.7148 of 1997 with MA.Nos.1613/1998, 3185/1999, 691/2000 and 2241/1998, dated 16.12.2003.

2. The Andhra Pradesh Public Service Commission (APPSC) has advertised Notification for appointment to the posts of Assistant Engineers in Panchayat Raj Department earmarking seven posts for physically handicapped candidates. The petitioner being a physically handicapped candidate, applied for the said post along with others. As per the Certificate issued by the competent authority, he possessed 80% disability in the lower limbs, but, however, he was not selected. Challenging his non-selection, he filed the OA unsuccessfully. Aggrieved by the dismissal of the OA, he filed the present Writ Petition.

3. The learned counsel for the petitioner submits that adopting the provisions contained in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 framed by the Central Government, the State Government also framed Rule 3 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 (for short the Rules). Therefore, if the Rule is followed, the major disabled persons shall be given preference over the minor disabled persons. In the instant case, the persons selected were only with 40 to 60% disablement, whereas the petitioner is with 80% disablement. Therefore, his non-selection is illegal and contrary to the Rules framed by the Central Government as adopted by the State Government.

4. On the other hand the learned Standing Counsel for APPSC and also the learned Government Pleader for Services-II for respondents 2 to 11 submits that the disability is to be assessed only if a person possesses 40% disability and if it exceeds they are subjected to merit. Since the petitioner herein possessing 80% disability, he was also allowed to participate in the recruitment process, but as he did not come in the merit, his case has not taken into consideration.

5. The issue that arises for consideration is whether the petitioner is entitled for appointment as Assistant Engineer.

6. The Act viz., the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short the Act) has been enacted in the

interest of the disabled persons. In this regard Section 33 of the Act is relevant, which is extracted below:

> "**Reservation of posts**:- Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from,--

i. blindness or low vision;

ii. hearing impairment;

iii. locomotor disability or cerebral palsy,

> in the posts identified for each disability :
>
> Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section".

7. In pursuance of the Rules framed, the Central Government issued Office Memorandum dated 8.12.1980, and by adopting the same the State Government has framed Rule 36 of the Rules, which is extracted below:

> "**Computation of vacancies**:
>
> For the purpose of computation of vacancies for persons with disabilities in Group A, B, C & D Posts, the procedure laid down in the Department of Personnel and Training OM.No.39016/6/77-East (SCT) dated 4.11.1977, OM.No.36035/14/83-Estt, (SCT) dated 1.4.1986 and OM.No.36035/16/91-Estt, (SCT) dated 20.9.1994 (Annexure 'B' to the Rules) for computation of vacancies in Group C & D posts shall be applicable mutatis mutandies for computation of vacancies in group A&B posts also".

8. The question that arises for consideration is whether the petitioner's case has been ignored in violation of the directions of the Government.

9. The Government of India issued Office Memorandum dated 8.12.1980 giving the details as to how the posts should be filled up in 3% quota fixed by the Government for the purpose of disabled persons. The said Office Memorandum is extracted below:

OFFICE MEMORANDUM

Subject: Reservation of vacancies for the physically handicapped persons in Group 'C' Group 'D' posts services under the Central Government-identification of jobs for the physically handicapped persons.

The undersigned is directed to refer to this Department's OM.No.39016/6/77-Estt.© dated the 4th November, 1977 prescribing reservation of vacancies for the physically handicapped persons in Group 'C' and Group 'D' posts/services at the rate of 1% each for the blind, the deaf and the orthopaedically handicapped. It was also required that in order to implement these reservation orders the jobs which can be performed by various categories of physically handicapped persons without loss of productivity, should be identified by the Ministries/Departments.

As per the information collected from various Ministries/Departments, the occupational information Unit of the DGE&T has prepared a consolidated list of job Group C and Group d posts suitable for each of the categories i.e., the blind, the deaf and the orthopaedically handicapped. The list of such jobs is circulated to all the Ministries Departments for information and guidance. It is felt that this would help the Ministries in appointing physically handicapped persons against the 3% quota fixed by the Government for these persons.

Hindi version will follow.

S.No.	Category of Handicap	Occupational Groups
I. **ORTHOPADECALY HANDICAPPED**:		
a) Upper Extremeties		
	I) Major Defects	Accounts Clerks (U), Copy-holders (U), Office-Clerks (U-A), Office Superintendents (U), Peons (U), Proof Readers (U), Receptionists (U), Stamp Vendors (Postal), Waterman.

	ii) Minor Defects	Care takers (A), Chowkidars (A), Copy holders, Dark Messengers, Daftries (A), Documentation Assistants (A), Editorial Assistant (A), Gardners, Farashes, Gestetner Operators, Junior Engineers (Civil), Key Punch Operators (A), Laboratory Assistants (Chemical), Laboratory Assistants (clinical), Laboratory Attendents, Library Clerks (A), Liftmen (A) Meter Readers, Office Clerks (A), Office Superintendents, Peons, Photographic Retouchers, Proof Readers, Receptionists, Reserarch Investigators, Retiring Room Attendants, Salesman (shop) (A), Scientific Assistants, Security Guards (A), Store Keeper (A), Statistical Assistants, Sub-postmasters (A), Sweepers, Teachers (Primary), Telephone Operators (A), Time Keepers (A), Translators (A), Typists (A), Waiting Room Attendents, Wiremen, Ward Boys/Ayahs (A), Wireless Operators (A).

S.No.	Category of Handicap	Occupational Groups
Lower Extremities:	i)Major Defects	Accounts Clerks, Computers, Copy holders, Editorial Assistants, Hand Compositors (A), Junior Engineers (Civil) (only designing jobs), Key-Punch Operators, Liftmen, Office Clerks, Office Superintendent, Painters, Projectionists (A-MNR), Proof Reader, Radio Technicians, Receptionists, Stenos, Stamp Vendors (Postal), Sub-Postmasters, Telephone Operators, Telex Operators, Translators, Typists.

	ii) Minor Defects	Architectural Assistants (A-MNR), Book Binders, Caretakers (A-MNR), Carpenters (A), Cashiers (A), Compounders, Chowkidars (A-MNR), Commercial Artists, Daftries (MNR), Documentation Assistants (A-MNR), Dressers, Draughtsmen, Ferro Painters, Farashes, Gesterner Operators, Instrumentationists (Staff Artists (MNR), Laboratory Assistants (Chemical), Laboratory Assistants (Clinical),m Librarians (Junior) (A-MNR), Library Clerks (A-MNR), Musicians, Staff Artists (MNR), Packers, Peons (MNR), Photographers (MNR), Photographic Retouchers, Retiring Room Attendents (MNR), Salesman (Shop) (MNR), Statistical Assistants (MNR), Sweepers (MNR), Teachers (Deaf), Teachers (Primary), Technical Assistants (MNR), Time Keepers (A), Tracers, Vehicle Cleaners (MNR), Waiting Room Attendents (MNR), Wiremen, Wireless Operators.

10. Taking clue from the aforesaid statutory provision the learned counsel for the petitioner submits that the Junior Engineers, who are suffering from minor and major defects both lower extremities and upper extremeties as specified by the Government of India referred to above, are entitled for appointment and since the petitioner in this case suffers with major defect i.e., lower extremities up to 80%, he ought to have been considered over the persons who are having lesser disability in both the extremeties.

11. There is no dispute about the directions issued by the Government of India on this aspect and on this basis the petitioner is entitled for the appointment on the basis of the Office Memorandum dated 8.12.1980. But since the recruitment had already been completed, no useful purpose will be served by setting aside the appointment of another candidate and directing the Government to give appointment to the petitioner. Yet at the same time the petitioner could be adjusted either in the existing vacancies or in the next available vacancy reserved for physically handicapped candidate in Junior Engineer cadre, which is redesignated as Assistant Engineer.

12. Under those circumstances while setting aside the order of the Tribunal, we dispose of the Writ Petition with a direction that the authorities shall appoint the petitioner as Assistant Engineer either in the existing vacancies or immediately available future vacancies reserved for physically handicapped candidates. No costs.

(G.BIKSHAPATHY, J.)

25th April, 2005.

(P.S.NARAYANA, J.)

SSR

To

1 The Secretary, A.P. Public Service Commission, Opp. Gandhi Bhavan, Hyd.
2 Chief Secretary to Government, Govt of A.P., Secretariat, Hyd.
3 The Secretary, Women Development, Child Welfare and Disabled Welfare Department, Secretariat, Hyd.
4 The Principal Secretary to Government, PR & RD Dept., Secretariat, Hyd.
5 The Engineer-in-Chief, Panchayat Raj, Erramanzil Colony, Hyd.
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9 Engineer-in-Chief, Roads and Buildings, Dept., Erramanzil, Hyd.
10 The Principal Secretary to Govt., UD & MA Dept., Secretariat, Hyd.
11 The Engineer-in-Chief, Public Health and Municipal Engineering, Masab Tank, Hyderabad-500 021.

12 The Registrar, A.P. Administrative Tribunal, Hyderabad.

13 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

14 2 CD copies

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